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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/714,316	11/16/2000	Thomas R. Justen	US-1483	6478
27062	7590	11/12/2003	EXAMINER	
ZIOLKOWSKI PATENT SOLUTIONS GROUP, LLC (BMCA) 14135 NORTH CEDARBURG ROAD MEQUON, WI 53097			VASUDEVA, AJAY	
			ART UNIT	PAPER NUMBER
			3617	

DATE MAILED: 11/12/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	SW
	09/714,316	JUSTEN ET AL.	
	Examiner	Art Unit	
	Ajay Vasudeva	3617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 02 September 2003.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-12, 14-28 and 31-34 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) 9-12, 14-28 and 32-34 is/are allowed.

6) Claim(s) 1-8 and 31 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

 1. Certified copies of the priority documents have been received.

 2. Certified copies of the priority documents have been received in Application No. _____.

 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

13) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

a) The translation of the foreign language provisional application has been received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

1) Notice of References Cited (PTO-892) 4) Interview Summary (PTO-413) Paper No(s). _____ .

2) Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) Notice of Informal Patent Application (PTO-152)

3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) 14. 6) Other: _____ .

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DETAILED ACTION

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the following must be shown or the feature(s) canceled from the claim(s).

A first tuning tube wrapped around a second tuning tube, as being argued by the applicant in the amendment dated 09/02/2003 (page 8, line 1).

Applicant is cautioned against adding new matter.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Specification

2. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required:

(A) The tuning tube connected in a common plane

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Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-4, 6-8, and 31 are rejected under 35 U.S.C. 102(b) as being anticipated by Japan (04-262013).

Japan (04-262013) shows an air intake silencer for an internal combustion engine, generally as claimed, having an inlet pipe [3] with an inlet passage, and a tuning tube [4] with a tuning passage in fluid communication with the inlet passage. The inlet pipe and the tuning tube are integrally formed (page 7 of the Japanese translation), and the length of tuning tube is greater than the inlet tube (page 6 of the Japanese translation). In one embodiment, the tuning tube is disposed in a wrap-around relationship with the inlet pipe, together with another tuning tube (page 7 of the Japanese translation). Further, the tuning tube is connected in the same plane that is disposed diagonally to the inlet tube.

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5. Claims 1-4, 7 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by JP (04-262015).

JP ('015) shows an air intake silencer (figure 4), having at least one inlet pipe [3] with an inlet passage, and a tuning tube [6] with a tuning passage in fluid communication with the inlet passage. The tuning tube is connected in a common plane between a first and second ends of the inlet pipe.

6. Claims 1-4, 7 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by DE ('967).

DE ('967) submitted with the applicant's IDS dated 09/02/2003 shows an air intake silencer, having at least one inlet pipe [1] with an inlet passage, and a tuning tube [2] with a tuning passage in fluid communication with the inlet passage. The tuning tube is connected in a common plane between a first and second ends of the inlet pipe.

7. Claims 1, 3, 4 and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by DE ('951).

DE ('951) shows an air intake silencer for an internal combustion engine, generally as claimed, having one inlet pipe [5] with an inlet passage, and a tuning tube [6] with a tuning

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passage in fluid communication with the inlet passage. At least parts of the inlet pipe and the tuning tube have substantially same diameter. The tuning tube is connected in a common plane between a first and second ends of the inlet pipe.

Response to Arguments

8. Applicant's arguments filed 09/02/03 have been fully considered but they are not persuasive.

(A) Rejection of claims 1-4, 6-8, and 31 based on Japan (04-262013):

Applicant argues that the amended claim 1 recites the tuning tube as being connected in a common plane, while JP '013 does not show such a feature.

It is noted that any two points in a space are always disposed in the same plane because the two can be connected by a straight line. The examiner is of the opinion that there in fact exists such a plane, disposed diagonally with respect to the inlet tube, that connects the first and second ends of the tuning tube. Therefore, the tuning tube is considered as connected in a common plane, even though such plane is not coplanar with the walls of the air inlet.

Regarding claims 6 and 31, the applicant further argues that the recitation "another tuning tube in a wrap around relationship with said at least one tuning tube" means that the first tuning tube is wrapped around a second tuning tube, a feature not shown in JP '013.

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The limitation “wrap around relationship with” has been interpreted broadly to mean that “**the first tuning tube is in a wrap around relationship [with the inlet pipe, together] with the second tuning tube**”, and is not necessarily limited to only mean that the first tuning tube is wrapped around a second tuning tube. JP ‘013 describes a double spiral form where the first tuning tube, together with the second tuning tube, is disposed in a wrap around relationship.

However, changing the language of the discussed limitation to “another tuning tube in a wrap around said at least one tuning tube” will be favorably considered, provided the applicant is able to point out the antecedent basis in the specification and also overcome the drawing objection.

9. Applicant's arguments with respect to claim 5 has been considered but are moot in view of the new ground(s) of rejection.

Allowable Subject Matter

10. Claims 9-12, 14-28, and 32-34 are allowed.

Conclusion

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: Hwang, Burdiso et al., Feuling, Mattei et al., Willett, Luxton, Klees, Wood et al., Japan (04-262014, translated), Japan (04-262015, translated), Japan (04-262017, translated), and Japan (409) show silencing devices.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ajay Vasudeva whose telephone number is (703) 306-5992.


AV

November 5, 2003


S. JOSEPH MORANO
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600